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IN THE MATTER OF THE PROPOSED MERGER OF
NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY
WITH METROPOLITAN LIFE INSURANCE COMPANY

DOCKET NO. F96-5

MEMORANDUM OF DECISION AND ORDER

Janice M. Wilson
Presiding Officer
August 14, 1996

Section 19B requires that the Merger Agreement must be approved by the Commissioner of Insurance ("Commissioner"), who has broad discretion in granting such approval. M.G.L. c. 175, § 19B. The Commissioner's review of the proposed merger (the "Merger") and the Merger Agreement under Section 19B is also governed by 211 Code of Massachusetts Regulations ("CMR") § 141.00, et seq. (the "Merger Regulation"). Under the Merger Regulation, the Commissioner may consider the following:

1. the fairness of the terms and conditions of the Merger Agreement;
2. whether the interests of policyholders of TNE are protected; and
3. whether the Merger is in the public interest.

211 CMR § 141.04. The Merger Regulation also provides that the Commissioner may elect to conduct a public hearing "in order to afford interested persons an opportunity to present data, views, arguments, or comments in regard to the proposed [M]erger . . . including, but not limited to, the [Merger] Agreement." 211 CMR § 141.08.

Additionally, Section 19B requires that the Merger Agreement must be approved by a vote of the majority of the Board of Directors of the domestic company, i.e., TNE, as well as by the vote of at least two-thirds of such of TNE's policyholders as are

§141.12(3). References to the Docket are not intended to be an exhaustive source of material in support of the point stated.

present and voting (in person or by proxy) at a special meeting called for the purpose ("Special Meeting"). M.G.L. c. 175, § 19B; 211 CMR §§ 141.07 and 141.13.

Furthermore, before this Merger can take effect, New York law requires the approval of the New York Superintendent of Insurance, the MetLife Board of Directors, and MetLife policyholders.⁵ New York Insurance Law ("N.Y. Ins. Law.") §§ 7104 and 7105. Under New York Insurance Law, the New York Superintendent will approve the agreement "if satisfied that it complies with [Article 71 of the N.Y. Ins. Law.], is fair and equitable, does not tend to substantially lessen competition in any line of insurance or tend to create a monopoly therein, and is not inconsistent with law." N.Y. Ins. Law § 7105.

Moreover, a number of other states which have laws that may affect the Merger or the operations of MetLife following the Merger have also reviewed this transaction. In fact, the approval of certain of such states is a condition to the consummation of the Merger. Consequently, the Companies have agreed to use their respective best efforts to file any required notices or otherwise take such actions as are necessary to obtain any required approvals or to comply with applicable requirements in connection with the Merger under such laws. (New England Mutual Life Insurance Company Proxy Statement ("Proxy

⁵ New York law does not require a public hearing in connection with the Superintendent's review of a merger application, and none has been held or noticed in this matter.



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Statement"), Docket Item 5A, at 24). Both companies have stated that they believe that the Merger can be effected in accordance with such laws and that no material delay in consummating the Merger will result therefrom. (Proxy Statement, Docket Item No. 5A, at 24; Merger Agreement, Docket Item No. 4G, at Section 6.6).

PROCEDURAL BACKGROUND

On August 24, 1995, TNE submitted the duly executed and attested copy of the August 16, 1995 Merger Agreement, that had been unanimously approved by both Companies' Boards of Directors, to the Massachusetts Division of Insurance (the "Division"). (Docket Item Nos. 1A-1B). A copy of the August 16, 1995 Merger Agreement was also submitted to the New York Superintendent of Insurance. (Proxy Statement, Docket Item 5A, at 10; Introductory Statement of H. James Wilson, dated June 14, 1996 ("Wilson Intro."), Docket Item No. 6A, at 9; Transcript of Public Hearing held at the Division on July 17, 1996 ("Tr."), Docket Item No. 123, Testimony of H. James Wilson ("Wilson Test., Tr.") at 29).

The Commissioner designated a working group ("Working Group") to conduct examinations of the Companies under M.G.L. chapter 175, § 4 ("Section 4") and 211 CMR § 141.06, including a review of the Merger Agreement. Pursuant to Section 4 and 211 CMR § 141.03, and by agreement of the Companies, the Division engaged the services of the following outside and independent legal, actuarial, accounting, and financial advisors ("Working Group Advisors") to assist in the conduct of the examinations:

LeBoeuf, Lamb, Greene & MacRae, L.L.P. as legal advisors; Price Waterhouse LLP ("Price Waterhouse") as actuarial and accounting advisors; and Alex. Brown & Sons Incorporated ("Alex. Brown") as financial advisors. The Division commenced its examinations of TNE and MetLife on August 15, 1995, and August 16, 1995, respectively. (Proxy Statement, Docket Item 5A, at 23-24; Docket Item Nos. 4E, 4F). M.G.L. c. 175, § 4; 211 CMR §§ 141.03 and 141.06.

Pursuant to the Merger Regulation, the Commissioner elected to hold a public hearing on this matter (the "Public Hearing"). 211 CMR § 141.08. By her authority under section 7 of M.G.L. chapter 26, the Commissioner designated the undersigned as the presiding officer of the Public Hearing. M.G.L. c. 26, § 7; 211 CMR § 141.03(12). On June 7, 1996, I issued a written Notice of Public Hearing to TNE and directed TNE to provide the same to MetLife and TNE's policyholders, insureds, employees, officers, and directors. (Docket Item No. 2). 211 CMR § 141.09(1)-(2).

Also on June 7, 1996, and in accordance with the Merger Regulation, the Commissioner approved the form of the TNE Proxy Statement, the TNE Notice of Special Meeting of Policyholders ("Notice of Special Meeting"), and various explanatory materials. (Docket Item Nos. 4EE, 107C). 211 CMR §§ 141.09(4) and 141.13(3).

Beginning on June 11, 1996, and concluding on or before June 17, 1996, TNE sent via first-class mail the Notice of Public Hearing, the Proxy Statement, the Notice of Special Meeting, and explanatory materials ("Policyholder Materials") to TNE's

approximately 657,000 Voting Policyholders⁶ and to its directors. (Affidavit of Compliance with Massachusetts Laws and Regulations ("Affidavit of Compliance"), Docket No. 107B, at 3; Wilson Test., Tr. at 40).⁷ As previously approved by the Commissioner, on June 14, 1996, TNE delivered the Notice of Public Hearing to its officers and employees by sending it via company interoffice

⁶ For purposes of this Memorandum, "Voting Policyholders" refers to (i) all holders of policies or contracts under which there is a right to participate in the divisible surplus of TNE and (ii) all holders of other policies and contracts which provide for membership in TNE, each as reflected on the corporate records of TNE (collectively, "TNE Voting Policyholders" or "Voting Policyholders") as of May 27, 1996. (Proxy Statement, Docket Item No. 5A, at 5-6).

⁷ During the printing and mailing process, proxy cards to 813 TNE policyholders were physically damaged. Consequently, the Policyholder Materials to those 813 policyholders were sent on June 18 and June 19, 1996. Additionally, on June 25, 1996, TNE sent Policyholder Materials to 866 policyholders who were inadvertently omitted from the original mailing. On July 15, 1996, at my direction, TNE sent a letter via overnight mail to each of those 866 policyholders advising them that for one week following the close of the Public Hearing, I would continue to accept into the Docket written statements concerning the proposed Merger for the Commissioner's consideration, that a copy of the transcript of the Hearing would be submitted to the Docket on an expedited basis to facilitate their review thereof, and that they were invited to attend the Special Meeting on July 22, 1996. (Exhibit A of Affidavit of Compliance, Docket Item No. 107B). The Division did not receive any statement or other inquiries identified as being from those policyholders. Furthermore, TNE did not send the Policyholder Materials to 8,316 persons who are listed in TNE's records as "lost" policyholders due to the fact that TNE has either no address or the record address is known to be in error. (Docket Item No. 107B).

mail. (Affidavit of Compliance, Docket Item No. 107B, at 3-4; Docket Item Nos. 4EE, 107C). On July 5, 1996, TNE sent via overnight mail the Notice of Public Hearing to MetLife. (Docket Item No. 72A). At the request of the Division, Price Waterhouse performed certain agreed-upon procedures to assist the Division in evaluating the mailing of Policyholder Materials to TNE Voting Policyholders and by letter dated July 16, 1996, reported its findings. (Independent Accountants Report on Applying Agreed-Upon Procedures, Docket Item No. 113). 211 CMR §§ 141.09(3) and 141.13(2).

Under the Merger Regulation, the Notice of Public Hearing must also be published in a newspaper, as approved by the Commissioner, at least 30 days prior to the Public Hearing. 211 CMR § 141.09(5). Similarly, the Notice of Special Meeting must be provided in accordance with law, and also published at least once a week for three successive weeks in some newspaper printed in the Commonwealth, and, because in this case one of the merging companies is domiciled outside of the Commonwealth, at least once a week for three successive weeks in some newspaper printed in the town where such company has its principal office (in this case New York, NY). M.G.L. c. 175, § 19B; 211 CMR § 141.13(2). As previously approved by the Commissioner, TNE arranged for publication in certain national and regional newspapers⁸ of the

⁸ These newspapers included the following: *Wall Street Journal*; *New York Times*; *The Boston Globe*; and *The Boston Herald*. (Docket Item No. 4EE, 107C)

Notice of Public Hearing on June 14, 1996, and of the Notice of Special Meeting on June 17 and 24 and July 1, 1996.⁹ (Docket Item Nos. 4EE, 107C, 107B, 108A-D).

TNE retained D.F. King & Co., Inc. ("D.F. King") to act as information agent to answer any inquiries from the Voting Policyholders who received the Policyholder Mailing described above. (Letter dated June 10, 1996, from Robert A. Shafto to Policyholder, at Proxy Statement cover, Docket Item No. 5A; Wilson Test., Tr. at 39). As of the day of the Public Hearing, D.F. King processed approximately 1,100 telephone inquiries from the approximately 657,000 TNE Voting Policyholders to whom the mailing was sent. (Wilson Test., Tr. at 39).

TNE requested the opportunity to testify at the Public Hearing regarding the Merger, and on June 14, 1996, submitted the requisite pre-hearing filing, which included, among other things, the written testimony, statements or comments, and related supporting documents to be offered by TNE at the Public Hearing. (Docket Item Nos. 3A-7F). 211 CMR § 141.10.

At the Public Hearing, which was held on July 17, 1996, TNE and MetLife presented under oath the oral statements of seven witnesses in support of the Merger Agreement. The persons making

⁹ Due to an early publication cut-off date, the publication dates for the Wall Street Journal, only, had to be changed from the above dates to June 20, June 24, and July 1, 1996. (Docket Item No. 107B, 108A-D).

statements were:

- H. James Wilson ("Wilson"), Executive Vice President and General Counsel of TNE (Tr. at 18-41, 216-225 ("Wilson Test., Tr."));
- Robert A. Shafto ("Shafto"), Chairman and Chief Executive Officer of TNE (Tr. at 41-96 ("Shafto Test., Tr."));
- Ted Athanassiades ("Athanassiades"), Vice Chairman of MetLife (Tr. at 97-125 ("Athanassiades Test., Tr."));
- Robert E. Schneider ("Schneider"), Executive Vice President and Chief Financial Officer of TNE (Tr. at 126-163, 183-186 ("Schneider Test., Tr."));
- John H. Tweedie ("Tweedie"), Executive Vice President of MetLife (Tr. at 164-182 ("Tweedie Test., Tr."));
- Gary W. Parr ("Parr"), Managing Director of Morgan Stanley and Company, Incorporated (Tr. at 186-201 ("Parr Test., Tr.")); and
- Kenneth Beck ("Beck"), Principal of Coopers & Lybrand L.L.P. (Tr. at 201-216 ("Beck Test., Tr.")).

The Notice of Public Hearing invited policyholders and interested persons to make oral statements at the Public Hearing and to submit written statements to the Docket for the Commissioner's consideration.¹⁰ 211 CMR §§ 141.09(1)-(2).

¹⁰ The Docket remained open for written submissions for the Commissioner's consideration and for the TNE policyholder vote until 5:00 p.m. on Wednesday, July 24, 1996. It was held open until noon on Friday, July 26, 1996, for TNE's responses to submissions made to the Docket at or after the Public Hearing and until noon on July 31, 1996, for the MetLife policyholder vote. (Tr. at 262-283).

Thirty-four policyholders submitted written statements into the Docket¹¹ and two appeared personally at the Public Hearing to make oral statements. (Tr. at 226-232, 255-260). Additionally, two members of the public, who are not policyholders, made oral statements at the Public Hearing. (Tr. at 232-254). One of them appeared also on behalf of a policyholder and made written submissions to the Docket. (Tr. at 241-254; Docket Item Nos. 117, 130(132), 141). TNE submitted to the Docket responses to both the written and oral statements. (Docket Item Nos. 100B-100BB; 111B-111M; 120B, 133; 142B; 145).

At the close of all the other testimony, the Working Group presented its Report on the Examinations undertaken to review the Merger and the Companies. (Tr. at 276-281; Working Group Report, Docket Item No. 118A).

The TNE and MetLife Special Meetings were held on July 22 and 30, 1996, respectively.¹² Of the TNE Voting Policyholders

¹¹ There were submissions from thirty-one TNE policyholders, two MetLife policyholders, and one policyholder of both TNE and MetLife. (Docket Item Nos. 10; 12; 18; 24; 26; 27A-B; 29; 30; 31; 35; 37A-D; 46; 47; 50-54; 65; 68; 74A-C; 75; 79; 80, 98A-C; 84; 85; 95-97; 102-103; 117, 130(132), 141; 125A-B. See also Docket Item Nos. 11; 28, 62A-B (81A-B); 101, 127.).

¹² The Merger Regulation states that "(t)he Special Meeting shall not take place prior to the commencement of [the Public] Hearing...". 211 CMR § 141.13. In this instance, the Public Hearing commenced and concluded on July 17, 1996, before the TNE Special Meeting. (Tr. at 283). Under § 94 of M.G.L. c.175, proxies were required to be received by TNE by July 15, 1996, to be voted at the TNE Special Meeting on July 22, 1996. By their terms and as a matter of law,

who voted, over 92% of the approximately 1,194,000 total votes cast were for approval of the Merger. (Docket Item No. 140B).¹³ Of the MetLife policyholders who voted, approximately 95% of the 132,509 total votes cast were for approval of the Merger. (Docket Item No. 147B).¹⁴

DISCUSSION

I. BACKGROUND AND PURPOSE OF THE MERGER

During the past several years, TNE's senior management and Board of Directors engaged in a process of analyzing the current

however, all proxies were revocable up to July 22, 1996, and any policyholder who wanted to revoke a proxy could have attended the Special Meeting and voted in person. (See New England Mutual Life Insurance Company Proxy Card ("Proxy Card"), Docket Item No. 5B). In addition, the pre-filed testimony and documents of TNE and MetLife have been in the Docket and available for public inspection since June 14, 1996, and the expedited transcript of the Public Hearing was submitted to the Docket before noon on July 18, 1996. (Docket Item Nos. 3A-7F; 123; 124).

¹³ The results of the TNE vote were 1,104,393 units voting "for", which represents 92.466% of total voted units and 20.946% of the total outstanding units. There were 89,985 units voting "against", representing 7.534% of the total voted units and 1.707% of the total outstanding units. Thus, a total of nearly 23% of the outstanding voting units participated in the Special Meeting vote. (Docket Item No. 140B).

¹⁴ The results of the MetLife vote were 125,282 votes "for", which represents 92.466% of total voted, and 7,227 votes "against", representing 7.534% of the total voted. (Docket Item No. 147B).

and future competitive challenges facing TNE and its subsidiaries. (Proxy Statement, Docket Item No. 5A, at 9; Wilson Intro. at 4; Wilson Test., Tr. at 22). These challenges included growing competition from banks, mutual fund companies, and other financial services firms that have entered traditional life insurance markets as well as changing consumer attitudes toward life insurance generally. (Proxy Statement, Docket Item No. 5A, at 9; Statement of Robert A. Shafto, dated June 14, 1996 ("Shafto St."), Docket Item No. 6B, at 9-10; Shafto Test., Tr. at 51-53). In addition, TNE's management and Board also recognized the more specific challenges facing TNE, stemming from under-performing real estate investments, including mortgages, which, although significantly reduced over the last several years, constitute a substantial percentage of its assets. (Shafto St. at 10-11; Shafto Test., Tr. at 53). This factor has affected TNE's earnings, capital position, and ratings. (Proxy Statement, Docket Item No. 5A, at 9; Shafto St. at 11; Shafto Test., Tr. at 53).

In response, TNE's management and directors embarked on a dual strategy, the first component of which was to enhance existing businesses and strengthen its financial position, including a reduction in real estate and mortgages. (Id.). The second component was to consider various strategic alternatives, including joint ventures, merger, or demutualization. (Proxy Statement, Docket Item No. 5A, at 9; Shafto St. at 11; Shafto Test., Tr. at 53-54).

Discussions between TNE and MetLife first began in late 1994, when MetLife approached TNE regarding the possibility of a merger. (Proxy Statement, Docket Item No. 5A, at 9; Wilson Intro. at 5; Wilson Test., Tr. at 24). Athanassiades and Shafto began general discussions about the Merger in early 1995. Both companies assigned senior executives to explore the advisability of the Merger and to keep their respective Boards informed. (Id.).

During the process of analyzing its strategic alternatives, TNE retained the services of the investment banking firm of Morgan Stanley and Company, Incorporated ("Morgan Stanley") to act as its financial advisor with respect to the Merger and to provide an opinion regarding the fairness of the Merger to TNE's policyholders from a financial point of view. (Proxy Statement, Docket Item No. 5A, at 12; Wilson Intro. at 6; Wilson Test., Tr. at 24-25. See Docket Item Nos. 4N, 4O.). TNE also retained the law firm of Dewey Ballantine to act as its legal advisor and Coopers & Lybrand, L.L.P. ("Coopers & Lybrand") to act as its actuarial advisor with respect to the Merger. (Proxy Statement, Docket Item No. 5A, at 13; Wilson Intro. at 6,10; Wilson Test., Tr. at 25. See Docket Item No. 4P.).

MetLife also retained advisors in connection with its analysis of the proposed Merger. It retained CS First Boston to provide an opinion regarding the fairness, from a financial point of view, of the Merger to the MetLife policyholders. (Wilson Intro. at 7; Wilson Test., Tr. at 26. See Docket Item No. 49C.). MetLife also retained Milliman & Robertson to act as its

actuarial consultant with respect to the Merger and to provide an opinion regarding the fairness, from an actuarial point of view, of the Merger to the MetLife policyholders. (Wilson Intro. at 7; Wilson Test., Tr. at 26. See Docket Item No. 49D.).

On May 17, 1995, the TNE Board of Directors met to discuss the status of the merger discussions. (Wilson Intro. at 6; Wilson Test., Tr. at 25). TNE management reviewed with the Board the impact of the Merger on TNE's policyholders, dividend policy, and the operational structure of TNE's business post-merger. (Wilson Intro. at 6; Wilson Test., Tr. at 25). Thereafter, on May 23, 1995, at the request of MetLife, TNE agreed that it would not discuss with any party any transaction that would interfere or be inconsistent with the Merger without first terminating discussions with MetLife. (Proxy Statement, Docket Item No. 5A, at 10; Wilson Intro. at 6-7; Wilson Test., Tr. at 25-26).

Through June, July, and August of 1995, TNE's management and MetLife's management engaged in due diligence review of their respective businesses¹⁵ and negotiated the terms of a definitive

¹⁵ This due diligence review focused on a number of critical issues, such as problems associated with allegations of market conduct improprieties by MetLife agents and MetLife's 1995 statutory financial statements which reported a net loss of \$672 million. TNE's management concluded that with respect to market conduct issues, MetLife was addressing the problem by implementing a comprehensive compliance program. (Shafto Test., Tr. at 91; Athanassiades Test., Tr. at 115-16). With respect to MetLife's statutory financials, TNE's management concluded that the net loss did not reflect operating losses but rather were (one time) capital losses. MetLife's statutory pre-tax operating earnings for 1995 reached \$599 million, the highest in MetLife's history.

merger agreement. (Proxy Statement, Docket Item 5A, at 10; Wilson Intro. at 7; Wilson Test., Tr. at 26). In connection with this due diligence and negotiation process, TNE was represented by both in-house counsel and its outside counsel, Dewey Ballantine. (Wilson Intro. at 7; Wilson Test., Tr. at 26). MetLife was represented by in-house counsel and the law firm of Skadden, Arps, Slate, Meagher & Flom. (Id.).

The TNE Board met on June 21, 1995, and again on July 19, 1995, at regularly scheduled meetings, to discuss the Merger and other strategic alternatives, including demutualization. (Proxy Statement, Docket Item 5A, at 10; Wilson Intro. at 7-8; Wilson Test., Tr. at 27). TNE management also reported on the status of the continuing due diligence and the negotiations with MetLife. (Wilson Intro. at 8; Wilson Test., Tr. at 27). The negotiations were completed by mid-August, 1995, and on August 16, 1995, TNE's

According to MetLife, its net operating loss, which is after tax and capital losses, reflected an unusually heavy federal surplus tax, the statutory impact of MetLife's successful acquisition of The Travelers Insurance Company's group life business, the accounting treatment of MetLife's disposition of Century 21 and Metmor (MetLife's former mortgage lending subsidiary) as well as losses that MetLife chose to take in order to shed some of MetLife's excess exposure to real estate investments. (Athaniassides St. at 7; Athaniassides Test., Tr. at 104-105). Moreover, MetLife expects its operating performance for 1996 to be significantly improved and it does not anticipate any other significant losses in the future. (Athaniassides Test., Tr. at 118, 122).

Board of Directors¹⁶ and MetLife's Board of Directors separately met to review the terms of the Agreement and Plan of Merger dated as of August 16, 1995 ("August 16, 1995 Merger Agreement"), and the transactions contemplated by it. (Wilson Intro. at 8; Wilson Test., Tr. at 28). Based upon representations by their respective managements and the opinions of their respective outside advisors,¹⁷ among other things, TNE's Board of Directors and MetLife's Board of Directors each unanimously approved the Merger according to the terms set forth in the August 16, 1995 Merger Agreement. (Proxy Statement, Docket Item 5A, at 10; Wilson Intro. at 9; Wilson Test., Tr. at 28).

Also, at the August 16, 1995 meeting, the TNE Board of Directors rejected demutualization as a strategic alternative, having concluded that demutualization was not in the best interests of policyholders or TNE in general for reasons including what the Board perceived as significant time, cost, and risk factors. (Shafto Test., Tr. at 72). At the August 16, 1995 meeting, the TNE Board determined that it would not pursue an unsolicited proposal it had received in July, 1995, from Stanford

¹⁶ Twelve of the fifteen members of TNE's Board are non-management "outside" directors. (Post-Hearing Memorandum, Docket Item No. 133, at 7).

¹⁷ By letter dated August 16, 1995, TNE obtained a formal opinion from Morgan Stanley that the Merger was fair to TNE and to TNE policyholders, from a financial point of view. (Docket Item No. 4N).

N. Phelps for a sponsored demutualization.¹⁸ (Proxy Statement, Docket Item 5A, at 10; Shafto Test., Tr. at 76).

After execution of the Merger Agreement on August 16, 1995, the Companies agreed to certain modifications of the Merger Agreement and the Boards of Directors of both TNE and MetLife each unanimously approved an Amended and Restated Agreement and Plan of Merger dated as of August 16, 1995, at meetings held on May 21 and May 28, 1996, respectively. (Proxy Statement, Docket Item 5A, at 10; Wilson St. at 9-10; Wilson Test., Tr. at 29-30). The Merger Agreement was executed by both TNE and MetLife on June 7, 1996. (Wilson St. at 10; Wilson Test., Tr. at 30).

The principal differences between the Merger Agreement and the August 16, 1995 Merger Agreement are as follows: (i) a more detailed description of the principles and practices that MetLife intends to apply in determining dividends to be paid by MetLife following the Merger; (ii) a covenant from MetLife regarding the approach that MetLife would use in the event it were to demutualize to assure that policyholder equity shares would be determined in a fair and equitable manner for all MetLife policyholders, including former TNE policyholders; and (iii) the extension of the date upon which the TNE Board or the MetLife Board may terminate the Merger Agreement, in the event that the

¹⁸ In June, 1996, Phelps again made a proposal for a sponsored demutualization. (Docket Item No. 11). TNE responded by requesting more detail concerning the terms of the proposal and additional information pertaining to Phelps' financing capabilities. (Docket Item No. 100B). TNE received no response. (Shafto Test., Tr. at 76).

Merger has not been consummated by such date, from June 30, 1996 to August 30, 1996. (Proxy Statement, Docket Item 5A, at 10; Statement of H. James Wilson, dated June 14, 1996 ("Wilson St."), Docket Item No. 6H, at 10; Wilson Test., Tr. at 30).

In a letter dated May 21, 1996, to TNE's Board of Directors, Morgan Stanley again opined that the Merger is fair to TNE and its policyholders. (Docket Item No. 40). This opinion confirmed Morgan Stanley's prior oral and written advice given to TNE's Board of Directors on August 16, 1995. (Id.; Statement of Gary W. Parr, dated June 13, 1996 ("Parr St."), Docket Item No. 6F, at 2-3; Parr Test., Tr. at 189; Proxy Statement, Docket Item No. 5A, at Annex D. See also Docket Item No. 4N.). This opinion, which was included in the Proxy Statement as Annex D, is based on several factors, including the expectation of higher dividends than would be available in the absence of the Merger, the expectation of improved ratings and credit position, the expectation of unit cost reductions, and the financial strength of the combined company after the Merger. (Docket Item No. 4N; Proxy Statement, Docket Item No. 5A, at Annex D; Parr St. at 4-6; Parr Test., Tr. at 191-94).

In a letter dated May 21, 1996, to TNE's Board of Directors, which was included in the Proxy Statement as Annex E, Coopers & Lybrand opined that the Merger is fair from an actuarial point of view to TNE and its policyholders, citing the following key

factors:

- (1) the future dividends for existing policyholders of TNE are likely to be higher than those TNE would have reasonably declared on a stand-alone basis;
- (2) the financial condition of MetLife after the Merger will be better than that of TNE on a stand-alone basis and will increase the likelihood of the existing TNE policyholders receiving the guaranteed benefits provided for within their insurance policies; and
- (3) the financial interests of the existing TNE policyholders (including the financial interests associated with conversion of a mutual company to a stock company) as a result of owning a participating insurance policy of a mutual life insurance company will be substantially the same or improved as policyholders of MetLife subsequent to the Merger.

(Docket Item No. 4P; Proxy Statement, Docket Item No. 5A, at Annex E; Statement of Kenneth M. Beck, dated June 12, 1996 ("Beck St."), Docket Item No. 6G, at 3-6; Beck Test., Tr. at 204-8).

On June 7, 1996, CS First Boston and Milliman & Robertson submitted written financial and actuarial fairness opinions, respectively, to the MetLife Board of Directors. (Docket Item Nos. 49C, 49D).

II. STRUCTURE OF THE MERGER

The Merger Agreement provides that TNE will merge with and into MetLife and that the surviving company, MetLife, will continue its corporate existence under the name Metropolitan Life Insurance Company. (Proxy Statement, Docket Item 5A, at 9, 22;

Wilson Intro. at 12; Wilson Test., Tr. at 32). Pursuant to the Merger Agreement, the legal existence of TNE as a separate mutual life insurance company will cease at the time of the Merger. (Proxy Statement, Docket Item 5A, at 9; Wilson Intro. at 12; Wilson Test., Tr. at 32-33). TNE's policyholders thereafter will be policyholders of MetLife, entitled to all the rights and privileges set forth in their insurance policies and annuity contracts, and to rights and privileges in MetLife according to, among other things, New York insurance law and the charter and by-laws of MetLife. (Proxy Statement, Docket Item 5A, at 9; Wilson Intro. at 12; Wilson Test., Tr. at 33).

In conjunction with the Merger Agreement, TNE and MetLife have agreed to a Statement of Operating Principles, as amended on May 15, 1996 ("Statement of Operating Principles"), which relates to TNE's and MetLife's post-merger operations.¹⁹ (Docket Item

¹⁹ Although the Statement of Operating Principles expressly states that it is not binding on MetLife, it is the mutual intent of both TNE and MetLife that the Surviving Company proceed in good faith to conduct its business in accordance with the Statement of Operating Principles. (Merger Agreement, Docket Item No. 4G, at Section 6.15; Proxy Statement, Docket Item No. 5A, at A-43; Shafro St. at 13; Shafro Test., Tr. at 57). Additionally, various matters addressed in the Statement of Operating Principles have become the subject of other binding commitments on the part of MetLife, including an Administrative Services Agreement entered into between New England Life Insurance Company and MetLife (Docket Item No. 73B) and certain commitment letters from MetLife to the Commissioner (Docket Item Nos. 4S(8C), 4T(8B), 4U(8D)). In particular, a statement of Dividend and Surplus Principles and Practices is the subject of a covenant in the Merger Agreement and of a June 6, 1996 commitment from Athanassiades to the Commissioner, discussed

No. 4L; Wilson Intro. at 12; Wilson Test., Tr. at 33). The Statement of Operating Principles contemplates that New England Variable Life Insurance Company ("NEVLICO"), a subsidiary of TNE currently organized under the laws of Delaware as a stock insurance company, will continue to conduct its existing businesses and also will conduct most of the business activities that are currently conducted by TNE. (Proxy Statement, Docket Item 5A, at 14; Wilson Intro. at 12-13; Wilson Test., Tr. at 34). At the effective time of the Merger, NEVLICO will change its name to New England Life Insurance Company ("NEL") and will be re-domesticated as a Massachusetts-chartered insurance company, headquartered at 501 Boylston Street in Boston. (Proxy Statement, Docket Item 5A, at 14; Wilson Intro. at 13; Wilson Test., Tr. at 33-34).

infra at 26-31. (Merger Agreement, Docket Item No. 4G, at Section 6.14 and Exhibit B; Docket Item No. 4T (8B); Proxy Statement, Docket Item No. 5A, at A-43, Annex F). Additionally, in a letter dated June 6, 1996, from Athanassiades to the Commissioner, MetLife provided the Commissioner with a commitment to, among other things, maintain a significant corporate and physical presence in Massachusetts, discussed infra at 36-38. (Economic Impact Commitment Letter, Docket Item No. 4S(8C)). Also, by letter dated June 6, 1996, to the Commissioner, Shafto and Athanassiades make certain commitments with respect to employment agreements between New England Life Insurance Company and six senior TNE executives, discussed infra at 34-35, footnote 31. (Executive Employment Contract Commitment Letter, Docket Item No. 4U (8D)). Furthermore, the Merger Agreement provides that two TNE directors will be appointed to the MetLife Board of Directors after the Merger. (Merger Agreement, Docket Item No. 4G, at Section 2.4; Proxy Statement, Docket Item No. 5A, at A-10).

The Statement of Operating Principles also contemplates that NEL will be managed after the Merger by TNE's current management. NEL's Board of Directors will have nine members who currently serve on the TNE Board, plus five additional directors who will be selected by MetLife. NEL will retain the TNE force of general agents and agents as a separate sales force from MetLife's agents, and will have its own line of products distinct from MetLife's that are focused on the high-end individual and small business life insurance markets. (Proxy Statement, Docket Item 5A, at 14; Wilson Intro. at 13-14; Wilson Test., Tr. at 34-35). NEL will assume policyholder servicing and administrative responsibilities for TNE's outstanding policies and contracts, which will become policies of MetLife as a result of the Merger. (Wilson Intro. at 14; Wilson Test., Tr. at 35). Furthermore, most TNE employees will become employees of NEL, rather than becoming employees of MetLife. (Proxy Statement, Docket Item 5A, at 14; Wilson Intro. at 13; Wilson Test., Tr. at 34-35).

Upon consummation of the Merger, TNE's controlling interest in New England Investment Companies, LP ("NEIC"), a publicly-traded investment management organization, will be owned by MetLife, either directly or through a subsidiary. However, NEIC will remain headquartered at 399 Boylston Street in Boston. (Wilson Intro. at 15; Wilson Test., Tr. at 36). NEIC is organized as a limited partnership with a single general partner, New England Investment Companies, Incorporated ("NEIC Inc."), which, following the Merger, will become a wholly-owned subsidiary of MetLife and for which MetLife will have the right

to appoint up to a simple majority of the board of directors.
(Proxy Statement, Docket Item 5A, at 14-15; Wilson Intro. at 15;
Wilson Test., Tr. at 36-37).

III. INTERESTS OF POLICYHOLDERS

TNE asserts that the Merger will protect the interests of
TNE's policyholders by virtue of the following factors.

A. Contractual Rights

Following the Merger, TNE's policyholders will, by operation
of law, become policyholders of MetLife and will be entitled to
the rights and privileges set forth in their insurance policies
and annuity contracts and to rights and privileges in MetLife in
accordance with, among other things, the New York Insurance Law
and the charter and by-laws of MetLife. (Proxy Statement, Docket
Item 5A, at 15; Wilson St. at 2-4; Wilson Test., Tr. at 219, 221-
223; Statement of Ted Athanassiades, dated June 17, 1996
("Athanassiades St."), Docket Item No. 6C, at 8; Athanassiades
Test., Hearing Tr. at 106). As a result of the Merger, TNE's
insurance policies and annuity contracts will continue in full
force and effect as policies and contracts of MetLife with all
the same terms and conditions as prior to the Merger.²⁰ (Id.).

²⁰ As TNE discussed in the Proxy Statement and at the Public
Hearing, a small percentage of TNE policyholders (less than
1%) will experience changes in voting rights by operation of
New York law. (Proxy Statement, Docket Item No. 5A, at 17-
18; Wilson St. at 2-4; Wilson Test., Tr. at 221-223).

B. Financial Strength of the Merged Company

TNE asserts that as a result of the Merger, TNE's policyholders will become part of a financially stronger mutual life insurance company with superior capital resources, greater capabilities, and higher credit ratings than TNE has at the present time, thereby protecting and enhancing the guaranteed benefits in their policies and contracts. (Proxy Statement, Docket Item 5A, at 11; Wilson Intro. at 15-16; Wilson Test., Tr. 37-38; Shafto St. at 1-2, 7-9, 11-13; Shafto Test., Tr. at 42, 49-50, 55-56; Athanassiades St. at 3-4; Athanassiades Test., Tr. at 100-101; Statement of Robert E. Schneider, dated June 14, 1996 ("Schneider St."), Docket Item No. 6D, at 2-4; Schneider Test., Tr. at 128-31, 132-37; Statement of John H. Tweedie, dated June 17, 1996 ("Tweedie St."), Docket Item No. 6E, at 4; Tweedie Test., Tr. at 168; Parr St. at 6; Parr Test., Tr. at 193-94; Beck St. at 5-6; Beck Test., Tr. at 207-8). Indeed, this was one of the key factors cited by TNE's actuarial advisors, Coopers & Lybrand, as a basis for its opinion that the Merger is fair from an actuarial point of view. (Docket Item No. 4P; Proxy Statement, Docket Item No. 5A, at Annex E; Beck St. at 4; Beck Test., Tr. at 205). Moreover, TNE expects that, following the Merger, NEL will operate with MetLife's higher ratings, which will enable NEL to become more competitive and increase the opportunities for NEL's growth in TNE's traditional markets, including the high-end individual insurance market. (Shafto St. at 3; Shafto Test., Tr. at 44-45, 75, 94; Schneider St. at 1-2, 4;

Schneider Test., Tr. at 127, 130-31; Parr St. at 4-5; Parr Test., Tr. at 191).

The Merger also seeks to capitalize on MetLife's and TNE's complementary business strengths. (Proxy Statement, Docket Item No. 5A, at 11; Wilson Intro. at 5; Wilson Test., Tr. at 24; Shafto St. at 12-13; Shafto Test., Tr. at 55-56; Athanassiades St. at 6; Athanassiades Test., Tr. at 103). That is, the Companies anticipate that the Merger will result in increased financial performance through operational efficiencies and a reduction in unit costs expected to be achieved by linking the complementary businesses of TNE and MetLife (rather than consolidating duplicative operations). (Proxy Statement, Docket Item No. 5A, at 11; Shafto St. at 13; Shafto Test., Tr. at 55-56, 74; Athanassiades St. at 6-7; Athanassiades Test., Tr. at 104; Parr St. at 6; Parr Test., Tr. at 193; Beck St. at 4-5; Beck Test., Tr. at 206).

Finally, both Companies have asserted that MetLife's superior financial size and strength is also expected to allow TNE's pre-Merger investment portfolio to be managed more flexibly using strategies that may produce higher investment returns than would have been possible absent the Merger. (Schneider St. at 5; Schneider Test., Tr. at 131; Tweedie St. at 3; Tweedie Test., Tr. at 166-167). According to the Companies, without TNE's current capital constraints, the Merged Company would be free to manage TNE's investment portfolio based more on fundamental economic considerations. (Id.). For example, management would have greater flexibility to continue to reduce the concentration of

under-performing real estate-related assets in TNE's investment portfolio. (Athanassiades Test., Tr. at 119).

C. Post-Merger Dividends

Both companies have asserted that they expect the cumulative amount of dividends payable by MetLife to TNE participating policyholders, who currently receive dividends, to be higher than the cumulative amount that TNE would pay such policyholders in the absence of the Merger. (Proxy Statement, Docket Item 5A, at 11; Wilson Intro. at 16; Wilson Test., Tr. at 38; Shafto St. at 3; Shafto Test., Tr. at 42-43; Schneider St. at 4, 14-16; Schneider Test., Tr. at 131, 142-44; Tweedie St. at 8; Tweedie Test., Tr. at 172; Beck St. at 3; Beck Test., Tr. at 204-05, 211). Coopers & Lybrand, TNE's actuarial advisor, expressly cited this as a factor in the opinion that the Merger is fair to the TNE policyholders. (Docket Item No. 4P; Proxy Statement, Docket No. 5A, at Annex E; Beck St. at 3; Beck Test., Tr. at 204-205).

By the terms of the Merger Agreement, the Companies have agreed to certain principles and practices to be applied by MetLife in the determination of dividends payable to former TNE participating policyholders in the years following the Merger. This agreement is codified in the Statement of Dividend and Surplus Principles and Practices (the "Dividend Principles"), Exhibit B to the Merger Agreement. (Docket Item No. 64B; Proxy Statement, Docket Item No. 5A, at Annex F). Additionally, MetLife has provided a commitment letter, dated June 6, 1996, to the Division, confirming its commitment to the Dividend Principles and agreeing to implement certain practices and

procedures to ensure compliance therewith following the Merger (the "Dividend Commitment Letter"). (Docket Item No. 4T(8B); Proxy Statement, Docket Item 5A, at 17). Pursuant to the Dividend Principles, MetLife will establish a "TNE Policy Segment" within MetLife's general account, which will be maintained for a period of at least ten years.²¹ (Dividend Principles, Docket Item No. 64B; Proxy Statement, Docket Item 5A, at 15 and at Annex F; Schneider St. at 12-13; Schneider Test., Tr. at 139-40; Tweedie St. at 7; Tweedie Test., Tr. at 171-72).

At the time of the Merger, the TNE Policy Segment will consist of the general account liabilities associated with all TNE participating policies and contracts in effect at the time of the Merger (the "Liabilities") and an amount of assets with a value equal as of December 31, 1995, to the sum of (1) the Liabilities, plus (2) \$150 million (the "Additional Assets"). (Proxy Statement, Docket Item 5A, at 15 and Annex F; Dividend Principles, Docket Item No. 64B; Schneider St. at 12; Schneider

²¹ As stated at the Hearing in response to my questioning, if the TNE Policy Segment continues to evidence a different pattern of mortality, interest, or expenses from those of similarly classified MetLife policyholders after ten years, it is possible that the TNE Policy Segment will be maintained by MetLife for longer than ten years. (Tweedie Test., Tr. at 176-77). Moreover, after the TNE Policy Segment ceases to be maintained separately, dividends to former TNE policyholders will be determined under MetLife's general dividend principles. (Dividend Principles, Docket Item No. 64B; Proxy Statement, Docket Item No. 5A, at Annex F; Schneider St. at 14; Schneider Test., Tr. at 141; Tweedie Test., Tr. at 176-177).

Test., Tr. at 140). These assets that are allocated to the TNE Policy Segment (including the Additional Assets) will be assets held in TNE's general account prior to the Merger. (Id.). For as long as the TNE Policy Segment is maintained, MetLife will manage these assets with the goal of maximizing the economic benefit to the former TNE policyholders.²² (Proxy Statement, Docket Item 5A, at 16 and Annex F; Dividend Principles, Docket Item No. 64B; Schneider St. at 13; Schneider Test., Tr. at 141).

In the calculation of dividends payable to former TNE participating policyholders during the existence of the TNE Policy Segment, MetLife will employ the experience and tax factors and the investment performance of the TNE Policy Segment. MetLife also intends to apply the methodology that TNE currently applies in determining dividends on TNE participating individual life insurance policies. (Proxy Statement, Docket Item 5A, at 16 and Annex F; Dividend Principles, Docket Item No. 64B; Schneider

²² As part of this effort, the Dividend Principles contemplate that, over time, the dividends paid by MetLife to former TNE Policyholders will include not only the net income on the assets in the TNE Policy Segment (including the Additional Assets), but also an amount representing (on an after-tax basis to MetLife) the value of the Additional Assets. This amount will include not only the value of the Additional Assets, but also an amount equal to the amount of any income tax deductions available to MetLife in respect of the amount distributed. (Dividend Principles, Docket Item No. 64B; Proxy Statement, Docket Item No. 5A, at Annex F; Schneider St. at 14-15; Schneider Test., Tr. at 142-43).

St. at 13-14; Schneider Test., Tr. at 141; Tweedie St. at 7; Tweedie Test., Tr. at 172).

Moreover, the TNE Policy Segment will not be affected by certain items, including merger-related expenses,²³ the conforming adjustments to the financial statements of the Merged Company,²⁴ any payments arising from the settlement of litigation between TNE and Copley Real Estate Advisors, Inc. and the

²³ The expenses incurred by both TNE and MetLife in connection with the Merger (including the costs incurred by the Division in connection with its review of the Merger) are expected to be approximately \$50 million. (Post-Hearing Memorandum, Docket Item No. 133, at 39, footnote 9). The managements of TNE and MetLife have asserted that they believe that this amount of merger-related expenses is reasonable in comparison to expenses typically incurred by large corporations in transactions of this type. (*Id.*). TNE produced testimony at the Public Hearing that these merger-related expenses will not be charged against the TNE Policy Segment and thus should not impact TNE policyholders; instead, they will come out of corporate surplus. (Schneider Test., Tr. at 155).

²⁴ The Dividend Principles state that neither conforming adjustments made in connection with the Merger in the value of the assets allocated to the TNE Policy Segment nor adjustments to the value of these assets because of changes in accounting basis will be taken into account in determining earned rates of the assets in the TNE Policy Segment until ten years following the date of the Merger. At that time, all such adjustments, to the extent that the adjusted assets then remain in the TNE Policy Segment and further to the extent indicated by then current appraisals, are to be assessed against the TNE Policy Segment but amortized over a five year period. (Dividend Principles, Docket Item No. 64B; Proxy Statement, Docket Item No. 5A, at Annex F).

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Washington State Investment Board,²⁵ or any payments made to TNE's senior officers under employment security agreements previously approved by TNE's Board of Directors.²⁶ (Dividend Principles, Docket Item No. 64B; Proxy Statement, Docket Item No. 5A, at Annex F; Schneider Test., Tr. at 160).

Finally, both Companies maintain that they anticipate that TNE's policyholders will receive higher cumulative policyholder dividends than they otherwise would have received in the absence of the Merger for the following three principal reasons:

First, the \$150 million of Additional Assets to be allocated to the TNE Policy Segment would not, in the absence of the Merger, have been taken into account in determining dividends.²⁷

Second, the significantly greater capital position of MetLife is expected to allow TNE's pre-Merger investment portfolio to be managed more flexibly using strategies that may produce higher investment returns.

Third, the operating expenses of the Merged Company are expected to be somewhat less over time than

25 Any monies paid in connection with such settlement by MetLife after the Merger will be paid out of MetLife corporate surplus and will not affect the TNE Policy Segment. (Letter dated June 7, 1996, from H. James Wilson, Esq. to the Honorable Linda Ruthardt, Docket Item 4V; Wilson Test., Tr. at 224).

26 These agreements are discussed infra at 34-35, footnote 31.

27 In response to my questioning at the Public Hearing, Beck, the Coopers & Lybrand witness, stated that the Coopers & Lybrand Opinion would have been the same absent the allocation of the Additional Assets to the TNE Policy Segment. (Beck Test, Tr. at 211-212).

policyholders (less than 1%) as a result of the Merger. (Tr. at 248-249, 253; Docket Item No. 117). This diminution in or loss of voting rights occurs specifically as a consequence of New York law and is described in the Proxy Statement that was distributed to all Voting Policyholders. (Proxy Statement, Docket Item 5A, at 17-18). TNE has responded that although it is theoretically possible that such a diminution in or loss of voting rights could figure into the calculation of equity shares in a demutualization of MetLife, it is unlikely that it would have other than a minor effect -- as the principal focus of all methods of equity share calculation is policyholders' contributions to surplus. (Post-Hearing Memorandum, Docket Item No. 133, at 48).

Finally, I note that any demutualization of MetLife in the future would require the approval of the New York Insurance Department and the policyholders of MetLife (including the former TNE policyholders).³⁰ N.Y. Ins. Law § 7312.

E. Continuity of Service

Both Companies assert that the structure of this Merger will protect TNE policyholders by assuring continuity of service and service-providers.

As set forth in section II, supra, upon the consummation of the Merger, NEL will, in addition to continuing to conduct

³⁰ New York Insurance Law requires that before approving the reorganization of a mutual life insurer to a stock life insurer, the New York Superintendent must conduct a public hearing and specifically find that the proposed reorganization complies with New York's demutualization statute, is fair and equitable to policyholders, and not detrimental to the public. N.Y. Ins. Law §7312.

NEVLICO's existing business of issuing variable life insurance and variable annuities, conduct most of the business activities that are currently conducted by TNE, including the servicing of TNE policyholders. (Statement of Operating Principles, Docket Item No. 4L; Economic Impact Commitment Letter, Docket Item No. 4S (8C); Schneider St. at 19; Schneider Test., Tr. at 148-49; Athanassiades St. at 9; Athanassiades Test., Tr. at 106-107). NEL will retain TNE's existing Boston-based headquarters, TNE's current management³¹ and the existing TNE force of general agents

³¹ Six officers of TNE have entered into employment agreements with NEL and MetLife following the Merger. (Shafto Test., Tr. at 62; Executive Employment Contract Commitment Letter, Docket Item No. 4U). According to the testimony of both Companies, MetLife entered into these employment contracts because it desires to maintain existing management in place to preserve continuity of service to TNE policyholders and, in particular, to preserve TNE's franchise in the high-end individual life insurance market. No extraordinary compensation is being paid to senior management at the time of or as a result of the Merger, and their salaries will not increase. (Dividend Commitment Letter, Docket Item 4T(8D); Athanassiades Test., Tr. at 107-108). According to MetLife, the compensation packages in the employment contracts are consistent with packages for similarly situated MetLife executives and industry standards. (Athanassiades Test., Tr. at 107-108). In addition, MetLife retained outside consultants, Hewitt Associates, who reviewed those packages and concluded that they are reasonable in light of the labor market in which NEL would compete for executives and the customary practices when executives are retained after a merger. (Id.; Docket Items Nos. 116A-C; 139A-B).

These six officers also relinquished their rights to certain severance benefits they may have been entitled to under employment security agreements ("ESAs") with TNE that had been entered into in September 1993 at the time TNE's management and Board of Directors had begun the process of

and agencies (as a separate sales force from MetLife's agents), as well as its own line of products (distinct from MetLife's) focused on the high-end and small business markets and on certain new initiatives. (Proxy Statement, Docket Item 5A, at 16; Shafto St. at 14; Shafto Test., Tr. at 58-59). Additionally, NEL will assume policyholder service and administrative responsibility for former TNE outstanding policies and contracts which at the time of the Merger will become policies and contracts of MetLife. (Statement of Operating Principles, Docket Item No. 4L; Economic Impact Commitment Letter, Docket Item No. 4S(8C); Wilson Intro. at 14; Wilson Test., Tr. at 35; Shafto St. at 15; Shafto Test., Tr. at 59; 92; Schneider St. at 19; Schneider Test., Tr. at 148-149).

Moreover, in response to certain policyholders' expressions of concern about the comparatively larger size of the Merged

analyzing strategic alternatives, including certain options which could have resulted in the displacement of current management. TNE has asserted that the purpose of the ESAs was to align the interests of TNE's management more closely with those of policyholders by ensuring (by means of severance pay) against losses (e.g., loss of position), that could have resulted from a change of control (accompanied by a change of management) of TNE. The ESAs were intended to make TNE's senior officers indifferent between remaining in control (and analyzing transactions solely for entrenchment purposes) or supporting a transaction that could result in their termination, even if that transaction was in the best interests of policyholders. (Shafto Test., Tr. at 63-64, 83-85; Post-Hearing Memorandum, Docket Item No. 133, at 45). Nothing suggests that management has entered into this Merger for personal gain at the expense of the interests of TNE or its policyholders.

Company, and my questions on this topic at the Public Hearing, TNE asserts that this transaction has been structured to take advantage of the strength and size of MetLife's "bigness" while maintaining the smaller entity of TNE so there will be no impact on servicing of TNE policyholders. (Shafto Test., Tr. at 80-81). The Companies maintain that for these reasons, TNE's policyholders will continue, after the Merger, to receive the same services, from substantially the same sales and servicing personnel and the same agents, as they currently do. (Proxy Statement, Docket Item 5A, at 11).

IV. ECONOMIC IMPACT

In conjunction with the Merger, MetLife has committed to the Division that it will maintain certain levels of employment, charitable contributions, and tax benefits for Boston and the Commonwealth of Massachusetts. MetLife has provided an Economic Impact Commitment Letter to the Division that agrees to the following: (i) NEL will retain its Boston headquarters for a period of at least ten years; (ii) based upon currently available projections, NEL's Massachusetts-based home office employment will total approximately 2,200 jobs at the date of the Merger and will remain at not less than approximately 2,000 jobs for at least the first three years following the Merger; and (iii) the jobs at NEL will represent a cross-section of executive, professional, middle-management and other non-exempt positions. (Economic Impact Commitment Letter, Docket Item No. 4S(8C). See also Shafto St. at 20; Shafto Test., Tr. at 67.). In addition, a

limited number of jobs in MetLife operations will be offered to employees of TNE who are willing to relocate. (Shafto St. at 20; Shafto Test., Tr. at 67).

The Companies do acknowledge that there will be some job loss in Massachusetts associated with the Merger, amounting to less than 150 jobs out of 2,200. (Shafto Test., Tr. at 79). This loss of jobs will occur mostly in the areas of investment management, accounting and taxation, and none will be in the area of policyholder servicing. (Id.). Employees who lose their positions as a result of the Merger will be eligible for an "enhanced" severance program. (Id.). Moreover, MetLife does not anticipate any additional loss of jobs in the near future. (Athanassiades Test., Tr. at 110).

MetLife has also agreed pursuant to the Economic Impact Commitment Letter to maintain TNE's level of charitable giving for at least a period of three years following the Merger. (Economic Impact Commitment Letter, Docket Item No. 4S(8C)). For example, NEL will continue its involvement with two Boston public schools, including a summer jobs program and involvement in a variety of community programs such as the Mayor's Boston Can Share Program, the United Way's Community Care Day, and others. (Shafto St. at 18-19; Shafto Test., Tr. at 65-66). NEL will also continue TNE's involvement in local business organizations such as the Boston Chamber of Commerce, the Back Bay Association, the Private Industry Council, and the Boston Plan for Excellence in the Public Schools. (Shafto St. at 19; Shafto Test., Tr. at 65-66). It is also expected that the level of total charitable

contributions will increase from approximately \$1 million in 1995 to an amount in excess of \$1.2 million. (Shafto St. at 18; Shafto Test., Tr. at 65).

Finally, the Companies expect the impact of the Merger on the level of taxes paid by TNE to the Commonwealth and to the City of Boston to be modest. (Shafto St. at 20; Shafto Test., Tr. at 67). MetLife has committed in the Economic Impact Commitment Letter, subject to fluctuations in business volume, that it anticipates that, for at least three years following the Merger, MetLife and/or NEL will pay substantially the same aggregate level of taxes and fees to the Commonwealth and to the City of Boston as are currently being paid by TNE and NEVLICO. (Economic Impact Commitment Letter, Docket Item No. 4S(8C); Shafto St. at 21; Shafto Test., Tr. at 68).³²

V. REPORT OF WORKING GROUP AND WORKING GROUP ADVISORS

The Working Group conducted examinations of TNE and MetLife under M.G.L. c. 175, § 4, which included extensive due diligence,

³² On average, TNE has paid approximately \$10 million per year, from 1990 through 1994, in various taxes and fees to the City of Boston and to the Commonwealth. These taxes and fees include premium taxes, investment income taxes, local real estate taxes, insurance department licensing and other fees, sales and use taxes, unemployment taxes, and miscellaneous other taxes and levies. (Shafto St. at 20-21; Shafto Test., Tr. at 67-68). The bulk of TNE's taxes are comprised of premium tax (roughly \$2 million), local real estate tax (\$4.6 million per year) and investment income taxes (approximately \$1.8 million per year for the years 1990 through 1994). (Shafto St. at 21; Shafto Test., Tr. at 68).

review of the Merger Agreement, the Docket, and other documents and matters. (Docket Item No. 118A; Tr. at 277-79). In addition, the Working Group and Working Group Advisors listened to all the testimony and other information presented at the Public Hearing. (Id.). At the close of the other testimony in the Public Hearing and by letter dated July 17, 1996, the Working Group reported to the Commissioner as follows:

In conducting the examinations, including the review of the Merger Agreement, the Docket and other documents and matters and the conduct of extensive due diligence, the Working Group has not become aware of any fact or facts, and none of the Working Group Advisors, nor anyone else, including policyholders and members of the public, has advised the Working Group of any fact or facts, which would, when considered in light of the proposed transaction as a whole, tend to establish that:

1. the terms and conditions of the Merger Agreement are other than fair to TNE's policyholders;
2. the interests of TNE's policyholders are not being protected;
3. the Merger Agreement is contrary to the public interest; or
4. the Merger Agreement otherwise, and for any other reason, does not conform with the requirements of Section 19B, 211 CMR § 141, et seq. and other applicable provisions of law.

(Docket Item No. 118; Tr. at 279-280). The Working Group recommended approval of the Merger Agreement. (Docket Item No. 118A; Tr. at 281).

The Working Group based its report and recommendation, in part, upon the following opinions provided by the Working Group Advisors. Price Waterhouse opined that the Merger is "Fair," as defined in the Statement of Actuarial Opinion, to the policyholders of TNE from an actuarial point of view. (Price Waterhouse Statement of Actuarial Opinion, Docket Item No. 112; Testimony of David Rogers at Public Hearing held at the Division on July 17, 1996 ("Rogers Test., Tr."), at 266).

Price Waterhouse opined that the proposed Merger:

1. includes provisions which require the surviving company to allocate divisible surplus, including allocations to former TNE policyholders, in a manner consistent with relevant actuarial standards;
2. is reasonably likely to result in future dividends to the policyholders of the former TNE which are equal or greater than those likely should TNE remain a stand-alone company;
3. includes provisions which adequately protect the membership rights of the policyholders of the former TNE, post-Merger, provides reasonable assurances that any value ascribed to such membership rights and distributed to policyholders will be equitably determined and there is a reasonable probability that such value will be the same or greater than the value that could have been distributed had TNE demutualized on a stand-alone basis; and
4. includes provisions such that the financial condition of MetLife after the Merger is reasonably likely to be equal to or improved relative to that of TNE on a stand-alone basis and the likelihood of the policyholders of the former TNE receiving the guaranteed benefits provided for within

their insurance policies is improved.

(Docket Item No. 112, at 3-4; Rogers Test., Tr. at 266-267).

Price Waterhouse also performed certain procedures to assist the Division in evaluating compliance by TNE with their procedures for the preparation and mailing of Proxy Cards, Notices of Public Hearing, Notices of Special Meeting, Proxy Statements, and Question and Answer Brochures related to the proposed Merger. Price Waterhouse noted no significant items that did not comply with TNE's procedures. (Price Waterhouse Report of Independent Accountants on Applying Agreed-Upon Procedures, Docket Item No. 113; Rogers Test., Tr. at 265).

Finally, Alex. Brown provided an opinion to the Division that the Merger is fair, from a financial point of view, to TNE policyholders in the aggregate. (Alex. Brown Opinion Letter, Docket Item No. 114; Testimony of Thomas Johnson at Public Hearing held at the Division on July 17, 1996 ("Johnson Test., Tr."), at 275-276). Alex. Brown performed extensive due diligence, which included documentary review as well as discussions with the management of and advisors to both TNE and MetLife. (Docket Item No. 114 at 2-3; Johnson Test., Tr. at 274). In evaluating the proposed transaction, Alex. Brown focused on the structure of the Merger and the Merger's impact on policyholders, specifically:

- (1) the claims paying security provided to policyholders by the financial condition of TNE and MetLife combined post-Merger;
- (2) the policyholders dividend policy for TNE

policyholders in the Merged Company; and

- (3) the protection of TNE participating policyholders' financial interest in TNE's surplus.

(Johnson Test., Tr. at 273-74).

The findings supporting Alex. Brown's fairness opinion with respect to the Merger include the following:

- (1) the financial condition of MetLife after the Merger will be equal to or better than the financial condition of TNE on a stand-alone basis;
- (2) the cumulative amount of dividends payable to TNE policyholders will likely be higher with the Merger than without the Merger; and
- (3) the financial interests of TNE policyholders will be adequately protected, in part, through a Merger Agreement covenant which stipulates that policyholder equity shares will be determined in a fair and equitable manner for all MetLife policyholders, including pre-Merger TNE policyholders, in the event that MetLife were to demutualize.

(Id. at 274-75). Further, the economic and strategic benefits to TNE policyholders which support the above findings include but are not limited to:

- (1) the complementary nature of TNE's and MetLife's business operations;
- (2) a moderate level of anticipated cost savings; and
- (3) enhanced operating flexibility on behalf of TNE policyholders resulting from the stronger post-Merger financial condition of MetLife.

(Id. at 275).

the first part of the year, the weather was very
warm and the crops were growing well.

The second part of the year was very dry and the crops
were suffering from lack of water.

The third part of the year was very wet and the crops
were suffering from too much water.

The fourth part of the year was very hot and the crops
were suffering from lack of rain.

The fifth part of the year was very cold and the crops
were suffering from frost.

The sixth part of the year was very windy and the crops
were suffering from being blown over.

The seventh part of the year was very sunny and the crops
were growing well.

The eighth part of the year was very cloudy and the crops
were suffering from lack of light.

The ninth part of the year was very foggy and the crops
were suffering from lack of visibility.

The tenth part of the year was very stormy and the crops
were suffering from being blown away.

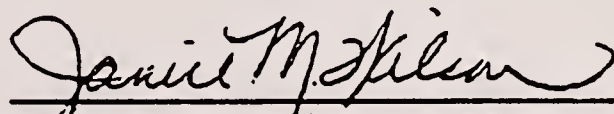
The eleventh part of the year was very calm and the crops
were growing well.

ORDER

Based on all of the foregoing, I conclude that the proposed Merger, including the Merger Agreement, meets the requirements set forth in M.G.L. c. 175, § 19B as well as the requirements and standards of review set forth in 211 CMR § 141.00, et seq. Therefore, it is hereby ORDERED:

1. that the application of New England Mutual Life Insurance Company to merge with and into Metropolitan Life Insurance Company pursuant to the Merger Agreement is hereby APPROVED; and
2. that the Merged Company shall file annually with the Commonwealth of Massachusetts Division of Insurance a report of its business operations in Massachusetts, including a description of its activities, and those of its subsidiaries and affiliates, during the preceding year relating to its compliance with the Economic Impact Commitment Letter (Docket Item No. 4S(8C)), the Statement of Operating Principles (Docket Item No. 4L), and the Statement of Dividend and Surplus Principles and Practices (Docket Item No. 64B).

Date: August 14, 1996



Janice M. Wilson, Esq.
Presiding Officer

Adopted:

Date: August 14, 1996



Linda L. Ruthardt
Commissioner of Insurance

